IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 25796 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **YES**

2 To be referred to the Reporter or not ? **YES**

3 Whether their Lordships wish to see the fair copy of the judgment ? **YES**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **NO**

5 Whether it is to be circulated to the civil judge ? **NO**

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KANTIBHAI MANILAL PRAJAPATI - Petitioner(s)
Versus
DIVISIONAL CONTROLLER - Respondent(s)

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Appearance :
MR JS BRAHMBHATT for Petitioner(s) : 1,
None for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 18/10/2007

ORAL JUDGMENT

1. Heard learned advocate Mr. J.S. Brahmbhatt appearing on behalf of petitioner.

2. In the present petition, petitioner has challenged the award passed by the Labour Court,

Ahmedabad in Reference (LCA) No. 1456 of 2003 dated 17th January 2007. The reference is rejected by the Labour Court, Ahmedabad.

3. Learned advocate Mr. Brahmbhatt submitted that Labour Court has committed gross error, not giving proper reasons in support of his conclusion and Labour Court has relied upon the statements of passengers and conductor which obtained by checking staff without examining the passengers in question. He submitted that as per deposition of the workman, he had already issued tickets to two passengers out of five and rest of three passengers, he was just issuing tickets while bus was checked, therefore, tickets were not issued to the passengers. He submitted that conductor was on road booking, therefore, charge of misappropriation cannot be considered against the petitioner. He submitted that even in report itself, no allegation of misappropriation is made by reporter against the conductor. The finding of inquiry office is perverse because at Page 57 in the finding given by inquiry officer, where, inquiry officer has observed that if the bus was not checked by checking staff that conductor may misappropriate the amount of fare from the passengers. In all, 15 passengers were travelling in the bus when the bus was checked by the checking staff. Out of 15 passengers, three passengers were found without tickets and fare was collected by the petitioner. In response to the reply of show cause notice, request was made by the petitioner to permit

him to examine the passengers as witnesses. Even, that opportunity was not given to the petitioner by the competent authority. He relied upon one decision of this Court in case of GSRTC, Ahmedabad v. Jethabhai Gandhabhai Rathod reported in 2004 (Lab. I.C.) 3099.

4. Learned advocate Mr. Brahmbhatt cited the aforesaid decision, wherein, bus was full with 60 passengers and there was heavy rush and process of issuance of tickets was going on when checking took place from mere fact that amount of tickets was collected, no charge of misappropriation can be said to have been made out. At the most, conductor may be guilty of negligence in discharging duty and not misappropriation. Except that, no submissions are made by learned advocate Mr. Brahmbhatt and no other decision is relied upon by him in support of his statement.

5. I have considered the submissions made by learned advocate Mr. Brahmbhatt and I have also perused the award passed by the Labour Court, Ahmedabad. The dispute was raised by petitioner against the dismissal before the Labour Court which referred for adjudication on 3rd December 2003. Before the Labour Court, statement of claim was filed by the petitioner vide Exh.6 and vide Exh.8, written statement was filed by respondent. The documents were produced by the respondent vide Exh.9/1 to Exh.9/13 which are exhibited at 11 to 23. Against the

dismissal, petitioner had preferred first appeal which was also dismissed on 4th July 2003. Before the Labour Court vide Exh.10, legality and validity of departmental inquiry was not challenged keeping upon to challenge the finding given by inquiry officer. It is necessary to note that petitioner had not led any oral evidence before the Labour Court in support of his defence.

6. The Corporation has also not led oral evidence vide Exh.24 necessary purshis was submitted before the Labour Court and written submissions were not made by petitioner. The Labour Court has framed the issue as to whether finding given by inquiry officer is baseless or perverse or not and whether punishment is disproportionate or not. The Labour Court has considered the allegations made against the petitioner that on 23rd October 2000, when petitioner was on road from Vataman to Dholka in route bus No.4585, at that time, at Ganol, bus was checked by checking staff, where, from Vataman to Dholka, three passengers were travelling who have paid the fare of Rs.18/- to the conductor, but, up to the checking point, conductor has not issued tickets to the passengers, therefore, unpunched tickets were obtained from the petitioner by the checking staff and accordingly, charge-sheet was served to the petitioner. The statement of passengers were recorded on the spot, wherein, signature was made by the petitioner. The statement of petitioner was also recorded by checking staff. The bus was checked after

a distance of 9 km and upto 9 km after recovering the fare, tickets were not issued to the concerned passengers.

7. In departmental inquiry, on 23rd April 2001, when inquiry officer asked one question to the petitioner that he wants to say something about his defence or whether he wants to examine any defence witness or not. Then, he says that really, these passengers were boarded to near checking place and accordingly, statement was given by him as obtained by checking staff and he assured that in future, this type of misconduct may not take place and assurance of the same was given by him. The Labour Court, thereafter, examined the relevant Clause 7(a) and 12(b) which are relating to the dishonesty and misappropriation by the conductor. After examining the submissions by the Labour Court from both the learned advocates, Labour Court had come to the conclusion that finding given by the inquiry officer is not baseless and perverse, but, it based on record of checking staff including the report and statement of passengers as well as the way-bill, unpunched tickets and evidence of petitioner workman.

8. Thereafter, Labour Court has examined the second question as to whether in light of the charge, it proved against the petitioner, whether punishment of dismissal can be considered to be disproportionate or not and whether in such cases, discretionary powers under Section 11A is required to be exercised or not.

The decision which has been relied by learned advocate Mr. Brahmbhatt reported in 2004 Lab.I.C. 3099 is the decision which has also been relied by Labour Court and Labour Court has distinguished the aforesaid decision on the ground that in reported decision, more than 60 passengers and heavy rush was there and process of issuance of tickets was continue. In comparison to this case, here, only 15 passengers were travelling in the bus and out of 15 passengers, three were found without tickets. Therefore, facts of that case is totally difference and therefore, that decision is not accepted by the Labour Court. The Labour Court has also considered the past record of the petitioner as per Exh.20, wherein, dismissal is passed by competent authority. In past, 23 defaults were committed by the workman concerned having 15 years of service record by the petitioner. Therefore, Labour Court has considered past record of the petitioner and present misconduct of dishonesty and misappropriation which was found to be proved by inquiry officer. That finding is based on evidence on record and ultimately, Labour Court has come to the conclusion that this is not a fit case, in which, Labour Court has exercised the discretionary powers under Section 11A of the Industrial Disputes Act, 1947. The Labour Court has also come to the conclusion that looking to the gravity of misconduct, punishment of dismissal cannot consider to be disproportion and unjust and therefore, reference is rejected.

9. I have considered the submissions made by learned advocate Mr. Brahmbhatt and decision relied upon by him. I have also perused the entire award passed by Labour Court. The question is that when legality and validity of the departmental inquiry is not challenged by the workman and keeping open to challenge the finding given by inquiry officer, the Labour Court has rightly appreciated the finding given by inquiry officer. In departmental inquiry, reporter was examined which was cross-examined by the petitioner, thereafter, petitioner was examined and reporter has produced the relevant records of statement of passengers, spot statement of conductor, unpunched tickets and way-bill which are the relevant records after appreciating the evidence of reporter and conductor, the inquiry officer has come to the conclusion that out of 15 passengers, three passengers were found without tickets, from that, Rs.18/- recovered by the petitioner and upto the checking point, it is, at least, 9 km distance, tickets were not issued by the petitioner to the concerned passengers. Accordingly, statement was given by conductor on the spot and statement of passengers were obtained in presence of conductor, opportunity was given to the petitioner in departmental inquiry as to whether he wants to examine any defence or not. The simple answer is 'NO'. Therefore, contention raised by learned advocate Mr. Brahmbhatt is that in reply to show cause notice to permit him to examine the passengers as a defence witness which has been rightly rejected

by the competent authority, because, that opportunity was already given to the petitioner not availed by petitioner, therefore, that cannot consider to be violation of principles of natural justice and contention raised by learned advocate Mr. Brahmbhatt cannot be accepted.

10. The findings are based on record, therefore, the same is not baseless and perverse, then, only question has to be considered by the Labour Court as to whether punishment imposed by the Labour Court is disproportionate or not or whether gravity of misconduct justified the punishment of dismissal or not. That aspect has been rightly examined by the Labour Court while considering 23 defaults of past record, where, similar kind of misconduct committed by the petitioner and in facts of the present case also, Rs.18/- recovered from three passengers, 9 km distance has been cleared even though tickets were not issued by the petitioner upto the checking point. Therefore, it is a clear case of misappropriation and dishonesty proved against the petitioner and on that basis, Labour Court has rightly not exercised the discretionary powers under Section 11A of the Industrial Disputes Act, 1947. The Labour Court can exercise the discretionary powers under Section 11A provided that Labour Court is satisfying that looking to the misconduct which has been proved against the workman, the punishment of dismissal is unjustified, then only, Labour Court may interfere, otherwise, Labour Court has no jurisdiction to interfere with

the punishment imposed by the competent authority.

11. In case of dishonesty and misappropriation, if it is committed by conductor, then, punishment of dismissal is considered to be proper and reasonable and not disproportionate by Apex Court in various decisions.

12. Considering the reasoning given by the labour court, according to my opinion, labour court has rightly appreciated the evidence on record and in such cases, when dishonesty and misappropriation is proved, question of modification of dismissal order does not arise. Post of Conductor is the post of faith and confidence. Any sympathy with such conductor is considered to be misplaced sympathy because ultimately revenue of the corporation is lost because of recovery of the amount of fare from passengers by conductor without issuing tickets to those passengers.

13. The post of Conductor is a post of confidence and faith and they should have to maintain the integrity which save the revenue of Corporation. If Conductor permitted to misappropriate the amount, then, it is very difficult for Corporation to run administration smoothly. In such cases, the competent authority must have to pass proper punishment, so, repeated misconduct may not be committed by any employee. That view has been taken by Apex Court and high Court recently in reported decision (i) 2006 AIR

SCW 3713, (ii) 2006 SCC Lab. & Service 1185, (iii) JT 2006(7) SC 200, (iv) 2006 (8) SCC 108, (v) 2006 (11) Scale 316, (vi) 2006 I LLJ 1004 SC (vii) 2007 II LLJ 872 Bombay, (viii) 2007 II LLJ 948 Delhi.

14. Recently, the Apex Court in case of ***Bank of India & Ors. v. T. Jogram*** reported in ***2007 AIR SCW 5069*** has taken the view in Para 13 and 14 which is quoted as under :

> *"13. In B.C. Chaturvedi v. Union of India, (995) 6 SCC 749, a three Judge Bench of this Court held in Paragraph 12 as under :- [See : (1995) AIR SCW 4374]*
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> *"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/ Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own*

> *independent that the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."*

15. In the case of Regional Manager, U.P. SRTC v. Hoti Lal reported in *(2003) 3 SCC 605*, the apex Court observed at p.614 SCC as under :-

> "If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trust worthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of learned Singe Judge upholding the order of dismissal."

16. Recently, in case of The Depot Manager APSRTC Vs. B. Swamy reported in 2007 AIR SCW 4930, it has been observed in para 7, as under:

> "7. We fail to understand how the incident could be characterized as accidental. The mere fact that this was

> the first occasion when the respondent was caught, is no ground to hold that it was accidental. What weighed with the learned Judges was the fact that the respondent had not found to be involved in such irregularities earlier. In our view that is not very material in the facts of this case. A conductor of a bus enjoys the faith reposed in him. He accepts the responsibility of honesty collecting fares from the passengers after issuing proper tickets and is obliged to account for the money so collected. It conductors were to be dishonest in the performance of their duties, it would cause serious pecuniary loss to the employer. The High Court was, therefore, not justified in observing that the management gave "excess gravity" to the offence. We are constrained to observe that the High Court was not justified in characterizing the order of the management as one induced by exaggeration of the gravity of the offence. The conductor performs only the duty of issuing tickets to the passengers and accounting for the fare collected from the passengers to the management. If he is dishonest in the performance of his duties, he is guilty of serious misconduct and the gravity of the misconduct cannot be minimized by the fact that he was no earlier caught indulging in such dishonest conduct. There is no guarantee that he had not acted dishonestly in the past as well which went undetected. Even one act of dishonesty amounting to breach of faith may invite serious punishment."

17. Therefore, Labour Court has also appreciated the evidence on record and looking to the past record, Labour Court has rightly come to the conclusion that finding given by inquiry officer is not baseless and perverse and punishment of dismissal

is not disproportionate which is to be found proved against the petitioner.

18. Therefore, according to my opinion, this Court cannot re-appreciated the evidence which has already been appreciated by the Labour Court and this Court has very limited jurisdiction to interfere with the award passed by the Labour Court while exercising the powers under Article 227 of the Constitution of India. This Court cannot act as an appellate authority, even, in case, when two views are possible, this Court cannot interfere with the punishment imposed by the Labour Court. The Labour Court has given cogent reasons in support of his conclusion and Labour Court has not rightly exercised the powers under Section 11A of the Industrial Disputes Act, 1947. For that, Labour Court has no power to interference under Article 227 of the Constitution of India.

19. Therefore, considering the aforesaid observations made by the Hon'ble Apex Court, and considering the facts of this case, post of conductor is a post of confidence and faith and little breach of such confidence and faith would shaken the confidence and faith and therefore, according to my opinion, Labour Court has rightly appreciated the oral and documentary evidence on record and has rightly passed the award in question and same would not warrant any interference of this court in exercise of the powers under Article 227 of the

Constitution of India. Therefore, this petition is required to be dismissed.

20. In result, there is no substance in the present petition. Accordingly, present petition is dismissed.

Sd/-

[H.K. RATHOD, J.]

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